

News Weekly

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Inside This Issue

Highlights of the Week
New Amendments
Recent Case Laws
Important Dates

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Services Offered

Audit and Assurance
Accounting Services
Income Tax
Service Tax
Value Added Tax
Corporate Governance
Services For Non-Resident
Consultancy

Highlights of the Week

- ☞ Banking Amendment Bills 2011 passed in Parliament as well as Rajya Sabha, **Page-2**
- ☞ Implementation date of new cheque book further extended up to March 31, 2013, **Page-2**
- ☞ Rajiv Gandhi Equity Savings Scheme has been notified for deduction under section 80CCG of the Income-tax Act, 1961 **Page-2**
- ☞ Company Amendment Bill -2011 passed in Lok Sabha and pending for passage in Rajya Sabha **Page - 3 to 5**
- ☞ Extension of due date for filling of Cost Audit Report, Compliance Report and audited Financial Statements in XBRL, **Page-6**
- ☞ Centralized Processing of Returns Scheme, 2011, issued vide CBDT Notification No. SO 16(E) dated 4.1.2012, the Director General of Income Tax (System) hereby extends the time limit for filing ITR-V forms relating to Income Tax Returns filed electronically (without digital signature Certificate) for Assessment Year 2010-2011 (filed during Financial Year 2011-2012) and for Assessment Year 2011-2012 (filed on or after April 1, 2011). These ITR-V forms can now be filed up to December 31, 2012 or within a period of 120 days from the date of uploading of the electronic return data, whichever is later. This direction is issued to mitigate the hardship and grievance of the tax payers who have been prevented by reasonable causes to file the ITR-V in time.

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THE BANKING LAWS (AMENDMENT) BILL 2011

The Banking Laws (Amendment) Bill 2011 was introduced in order to amend the Banking Regulation Act, 1949, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980. The said Bill has been passed by both the Houses of Parliament during its just concluded Winter Session.

The salient features of the Bill are as follows:

- To enable banking companies to issue preference shares subject to regulatory guidelines by the RBI;
- To increase the cap on restrictions on voting rights;
- To create a Depositor Education and Awareness Fund by utilizing the inoperative deposit accounts;
- To provide prior approval of RBI for acquisition of 5% or more of shares or voting rights in a banking company by any person and empowering RBI to impose such conditions as it deems fit in this regard;
- To empower RBI to collect information and inspect associate enterprises of banking companies;
- To empower RBI to supersede the Board of Directors of banking company and appointment of administrator till alternate arrangements are made;
- To provide for primary cooperative societies to carry on the business of banking only after obtaining a license from RBI;
- To provide for special audit of cooperative banks at instance of RBI by extending applicability of Section 30 to them; and
- To enable the nationalized banks to raise capital through "bonus" and "rights" issue and also enable them to increase or decrease the authorized capital with approval from the Government and RBI without being limited by the ceiling of a maximum of Rs. 3000 crore under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980.

Some of the salient amendments that were demanded by the RBI (as a prerequisite to issuing new bank licenses) and have been approved are as follows:

1. Raise cap on voting right to 26% in private banks and to 10% in PSU banks from the existing 10% and 1% respectively;
2. RBI has the option to inspect information and returns from associate enterprises of banking companies;
3. To give RBI the power to call for information and returns from associate enterprises;
4. To allow RBI to supersede the board of a banking company and appoint an administrator for up to 12 months.

DEAD LINE FOR NEW CHEQUE FORMAT EXTENDED.

RBI has extended the deadline for banks to issue new cheques with uniform security features till March 31, 2013. Bank account holders can continue to use their old format cheques up to March 31, 2013.

RAJIV GANDHI EQUITY SAVINGS SCHEME

This deduction is available under section 80CCG of Income Tax Act, to new investors whose gross total income does not exceeds more than 10 lakh.

Amount of Deduction

The amount of deduction is 50% of amount invested in equity shares (max investment is ₹ 50,000/-). This deduction cannot exceeds ₹ 25,000/- .

Condition for Calming Deduction:

- New Retail Investor as specified in the notified scheme.
- The investor is locked for a period of 3years from the date of acquisition in accordance with the above scheme.

HIGHLIGHTS OF COMPANIES BILL 2011

The Lok Sabha on 18th December 2012 passed the much awaited Companies Bill 2011, however the bill has not passed at Rajya Shabha as Rajya Shabha adjourned Sine die.

The Companies Bill 2011 has 470 clauses as against 658 sections in the existing Companies Act, 1956. The entire bill has been divided into 29 chapters.

Following are highlights of Companies Bill 2011.

- ✚ A private company have a maximum of 200 members, up from 50 in the companies Act, 1956.
- ✚ Private company which is a subsidiary of a public company shall be deemed to be a public company
- ✚ Concept of One Person Company (OPC limited) introduced [Clause 2(62)]
- ✚ Concept of Small companies have been introduced which shall be subjected to a lesser stringent regulatory framework [Clause 2(85)]
- ✚ Dormant Company - Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar for obtaining the status of a dormant company
- ✚ All companies to follow uniform financial year, running from April to March. Exceptions to be made only for certain companies with the approval of NCLT.
- ✚ All types of securities to be governed by the Bill.
- ✚ Companies can accept deposits only from its members, that too after obtaining shareholders' approval. Acceptance of deposit also subject to compliance with certain conditions.
- ✚ A company shall, on and from the 15th day of its incorporation and at all times thereafter have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it
- ✚ Company is required to furnish to the Registrar verification of its registered office within 30 days of its incorporation in the prescribed manner.
- ✚ Where a company has changed its name(s) during the last two years, it shall paint or affix or print, along with its name, the former name or names so changed during the last two years.
- ✚ A company having a share capital shall not commence business or exercise any borrowing powers unless a declaration is filed with Registrar by a director verified in the manner as may be prescribed that:
- ✚ **Security Premium Account** may also be applied for the purchase of its own shares or other securities. [Clause 52(2)(e)]
- ✚ A company cannot issue share at a discount. [Clause(53)]
- ✚ A company limited by shares cannot issue any preference shares which are irredeemable. However, a company limited by shares may, if so authorised by its articles, can issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue
- ✚ Every company shall deliver **debenture certificate** within six months of allotment.

- ✚ A company may issue preference shares for a period exceeding twenty years for **infrastructural projects** subject to redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preference shareholders. [Clause 55].

AUDITORS AND FINANCIAL STATEMENTS

- ✚ Every company is required at its first annual general meeting (AGM) to appoint an individual or a firm as an auditor. The auditor shall hold office from the conclusion of that meeting till the conclusion of its sixth AGM and thereafter till the conclusion of every sixth meeting. The appointment of the auditor is to be ratified at every AGM.
- ✚ Individual auditors are to be compulsorily rotated every 5 years and audit firm every 10 years in listed companies & certain other classes of companies, as may be prescribed.
- ✚ A company's auditor shall not provide, directly or indirectly, the specified services to the company, its holding and subsidiary company.
- ✚ A partner or partners of the audit firm and the firm shall be jointly and severally responsible for the liability, whether civil or criminal, as provided in this Bill or in any other law for the time being in force. If it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, then such partner or partners of the firm shall also be punishable in the manner provided in clause 447.

DIRECTORS

✚ **Number of Directors:**

Minimum: Public Company-3, Private-1, OPC-1

Maximum: Limit increased to 15 from 12

✚ **Woman Director:**

At least one woman director on the board of such class or classes of companies as many be prescribed

✚ **Resident Director:**

Every Company have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

✚ **Key Managerial Personnel:**

Every company belonging to such class or classes of companies as may be prescribed shall have the whole time key managerial personnel.

✚ **Interdepend Directors**

At least one-third of the total number of directors of a listed public company should be independent directors. Existing companies to get a transition period of one year to comply.

✚ **No of Directorship:**

A person can hold directorship of up to 20 companies, of which not more than 10 can be public companies.

✚ **Key Managerial Personnel (KMP):**

In relation to company means-

- (i) The Chief Executive Officer or the Managing Director or the Manager;
- (ii) The Company Secretary;
- (iii) The Whole-time Director;
- (iv) The chief Financial Officer; and
- (v) Such other office as may be prescribed.

If an company does not Appoint a Key Managerial Personnel, the penalty proposed is:

-On Company - ₹ 100,000/- to ₹ 500,000/-

-On KMP on default- ₹ 50,000/- to ₹ 1,000/- per day if continues.

DEPOSITS AND ADVANCES

- ✚ No permission of central government required to give a loan to a director.
- ✚ The provisions on inter-corporate loans and investment (372A of Companies Act 1956) extended to include loan and investment to any person.
- ✚ No central government approval required for entering into any related party transactions.
- ✚ No central government approval required for appointment of any director or any other person to any office or place of profit in the company or its subsidiary
- ✚ Every contract or arrangement entered into with a related party shall be referred to in the Board's Report along with the justification for entering into such contract or arrangement [Clause 188(2)].
- ✚ Any arrangement between a company and its directors in respect of acquisition of assets for consideration other than cash shall require prior approval by a resolution in general meeting and if the director or connected person is a director of its holding company, approval is required to be obtained by passing a resolution in general meeting of the holding company [Clause 192].
- ✚ A public company having prescribed net worth or turnover may accept deposits from persons other than its members subject to compliance of rules as may be prescribed by Central Government in consultation by Reserve Bank of India. (Clause 76)
- ✚ The penalty for failure to repay deposit has been made extremely stringent.

E-GOVERNANCE

- ✚ E-Governance proposed for various company processes like maintenance and inspection of documents in electronic form, option of keeping of books of accounts in electronic form, financial statements to be placed on company's website, holding of board meetings through video conferencing/other electronic mode; voting through electronic means.

OTHER AMENDMENTS

- ✚ Every company having net worth of rupees 5,000 crore or more, or turnover of rupees 1,000 crore or more or a net profit of rupees 5 crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.
- ✚ To encourage wider participation of shareholders at General Meetings, the Central Government may prescribe the class or classes of companies in which a member may exercise their vote at meetings by electronic means [clause 108].
- ✚ Every listed company shall prepare a Report on each Annual General Meeting including confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the Rules made there under.
- ✚ "Every company shall observe Secretarial Standards with respect General and Board Meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government."

Filing of Cost Audit Report and Compliance Report in the extensible Business Reporting Language (XBRL) mode.

MCA's General Circular Nos. 8/2012 dated May 10, 2012 [as amended on June 29, 2012] and 18/2012 dated July 26, 2012, it has been decided that all cost auditors and the companies concerned are allowed to file their Cost Audit Reports and Compliance Reports for the year 2011-12 [including the overdue reports relating to any previous year(s)] with the Central Government in the XBRL mode, without any penalty, within 180 days from the close of the company's financial year to which the report relates or by January 31, 2013, whichever is later.

Filing of Balance Sheet and Profit and Loss Account in eXtensible Business Reporting Language (XBRL) mode.

Ministry's General Circular No: 16/2012 dated 06.07.2012, that time limit to file the financial statements in the XBRL mode without any additions fee/ penalty has been extended up to January 15, 2013 or within 30 days from the date of AGM whichever is later.